IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 637 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

AND

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Appellants : MALDE PARBAT GADHVI

Versus

Respondent : STATE OF GUJARAT

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Appearance:

MR BM GUPTA for the appellants.

Mr. S.T. Mehta, APP for the State.

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CORAM : MR.JUSTICE H.R.SHELAT

and

MR.JUSTICE J.R.VORA

Date of decision: 29/02/2000

ORAL JUDGEMENT :(Per: H.R. Shelat, J.

This appeal is directed against the judgment and order dated 10th May 1995 passed by the then learned

Sessions Judge at Junagadh in Sessions Case No. 111 of 1993, convicting the appellants of the offences punishable under Sections 307, 324, 376, 504, 506 Part 2 of the Indian Penal Code and sentencing each of them to rigorous imprisonment for 10 years and fine of Rs. 2,000/-, in default simple imprisonment for 6 months more of the offence punishable under Section 376, Indian Penal Code, rigorous imprisonment for 5 years and a fine of Rs. 1,000/-, in default, simple imprisonment for 3 months more of the offence punishable under Section 307, Indian Penal Code, and inflicting no separate sentence with regard to the offences punishable under Section 324 and 506 Part-2 of the Indian Penal Code.

2. Necessary facts may in brief be stated. Popatbhai, his wife Champaben and his son Vanabhai reside at Mendpara in Junagadh District. They deal in cattle. They purchase the cows, buffaloes, goats and other cattle and sell. On 9th April 1993 all the three had gone to Kharachiya for purchasing the buffalo. They purchased a buffalo for Rs. 3,000/-. At 4.00 P.M. Vanabhai taking the buffalo left for Junagadh, while Champaben and her husband with a small child left Kharachiya for Sabalpur by a bus. From Sabalpur they were going on foot and on way their son Vanabhai with the buffalo met. They then decided to go to Sabalpur back as it was by the time 9.00 p.m. When they reached near the stone-grinding mill Gagu Khetsi Gadhavi (at present absconding) came out of his hut with an axe. He then inquired who they were and why they were going with the buffalo because he suspected theft of a buffalo. He then shouted for help. Both the appellants hearing the shouts & broil went near Gagu Khetsi. The appellant No.1 was armed with a spear, but the appellant No.2 was unarmed. Both the appellants then according to the prosecution started to abuse and appellant No.1 tried to cause hurt by the spear he was having, but as the husband of Champaben briskly made a move on one side, he was saved and the spear struck the buffalo. The son and husband of Champaben being horrified & distraught scurried to a distant place and did not come back because of horripilation happening; while the appellants and Gagu Khetsi pulling Champaben to the nearby field violated her person. After defiling Champaben and gratifying their passion all the three fled away. Despoiled Champaben then went to Sabalpur bus stand where her husband and son eagerly waiting met her. Mansukhbhai, the Upa-Sarpanch of the village was also present there. Champaben narrated whatever had savagely betided on her. With the help of Mansukhbhai the appellants could be nabbed but not Gagu Khetsi. The police was then informed and the complaint against the

appellants as well as Gagu Khetsi relating to the aforesaid offences came to be lodged with Junagadh Taluka police station. After the investigation, pursuant to the complaint lodged, was over, the police filed the chargesheet in the Court of the Chief Judicial Magistrate, Junagadh. As the learned Chief Judicial Magistrate was not competent to try the case, he committed the same to the Court of Sessions which came to be registered as Sessions Case No. 111 of 1993. The then learned Sessions Judge framed the charge at Ex.1 against both the appellants to which they pleaded not guilty. The prosecution therefore led necessary evidence. Appreciating the evidence before him, the then learned Sessions Judge convicted and sentenced both the appellants as aforesaid. It is against that judgment and order, the present appeal is filed by the appellants-original-accused No. 1 & 2. It may be stated that Gagu Khetsi is absconding, and would be, as and when apprehended, brought before the Court.

3. At the time of hearing, Mr. Gupta, the learned advocate representing the appellants, submits that he would not like to press the appeal on merits but would like to confine his submissions to the quantum of sentence. According to him, the sentence of 10 years inflicted relating to the offence of rape punishable under Section 376, Indian Penal Code, is harsh and not commensurating with the gravity of offence. He therefore submits that the court may show leniency and reduce the sentence.

4. The learned APP, Mr. S.T. Mehta, vehemently opposed the appeal made for leniency submitting that in cases of rape, the scurvy act, no leniency may be shown. The Court has to come down heavily upon such brutish-men sexually violating the person of women putting them to imminent fear of death or grievous hurt and making their lives miserable, as well as causing them to writhe life-long.

5. It should hardly be stated that the perpetrators of the crimes relating to the women are to be strictly dealt with and on the charge of rape or abetment of suicide, subjecting the woman to cruelty, miscarriage without woman's consent, causing hurt to women, wrongful restraint or confinement, criminal force, kidnapping, abduction, dowry death, buying & disposing of any woman as slave, buying or selling the woman for the purpose of prostitution or for compulsory labour or unnatural offences, robbery, extortion, dacoity, sexual violence, immoral trespass or of other offences relating to women

being proved, the accused must be mercilessly dealt with and harshly punished; but this principle cannot blindly be applied to all the cases and maximum punishment cannot be inflicted as if there is no exception to the general rule. The punishment must be commensurating with the gravity of offence or in the context of the peculiar facts & circumstances of the case, it must not be too harsh, or too liberal; it must be just and adequate. If the complainant side fans the fire of instigation and invites trouble, the offender cannot be sentenced to the maximum extent setting the proportion at naught.

6. In this case where reduction in sentence inflicted relating to offence of rape alone is prayed for we, considering the rival submissions, thought it proper to call the appellant No.1 before us and know what were the circumstances which led him to commit the alleged wrong. On his appearance before us, he with some reservation started to narrate the circumstances making it clear that before the lower Court he wanted to submit frankly so as to unfold the reality at length but his advocate advised him not to be lengthy and foolish in making the submissions in the Court which might harm him rather than doing good to him. He should be as short as possible. In view of such advice he had observed self-restraint. We therefore made it clear that he should make a clean breast of it without any fear in mind. He then submitted how he & two others were induced to commit the wrong. Gagu Khetsi seeing Champaben, her husband and their son with the buffalo suspected a theft of a buffalo and therefore he was inquiring might be roughly and toughly. Hearing the shouts and broil he and another appellant had gone there. Champaben could not tolerate humiliating situation to which her husband was put to. Riled with such humiliation, Champaben uttered unparliamentary words and abused them turning blind eye to modesty & bashfulness. By ribaldry she vomited out venom and challenged appellants' virility, mettle and intrepidity. They were rudely advised to show valiancy or valour elsewhere leaving aside doggish mentality. All were hooted out and brutified by harsh and fiery utterances which according to him cannot be spoken in open Court. He being rustic, boor & lout as well as hot-headed, became volcanic and lost his temper as well as discretion and prudence. Being infuriated he then dropped a brick and with the help of two others did the wrong but he was, before us, repenting. From his such narration, it appears to us that Champaben pushed the war-button and the appellants who lost the temper committed the barbaric act in the heat of excitement.

7. Of course, every one has to observe self-restraint and cannot take the law in his own hand but when appellants who are the rustic and boor could not control their mind because of unparliamentary utterances, both committed the wrong owing to grave & sudden provocation. In view of such peculiar facts and circumstances of this case, we think it proper to show leniency but certainly they cannot be let of. They must be in view of aforesaid fact adequately punished. The sentence inflicted of the offence of rape can be, in the above stated facts, termed harsh and not just. The same is required to be adequately reduced. If two years' sentence is reduced, the remaining sentence of 8 years would certainly be, in the facts & circumstances of this case, commensurating with the wrong done. In the result, the appeal deserves to be partly allowed making it clear that this order will not assume any criterial or authoritative value.

8. For the aforesaid reasons, the appeal is partly allowed. The conviction of the aforesaid offences is maintained, but the sentence inflicted of the offence punishable under Section 376 of the Indian Penal Code, is reduced to 8 years' rigorous imprisonment. Rest of the sentences inflicted are maintained. All the sentences to run concurrently.

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